

This document prepared by:
E. Kenneth Friker
On Behalf of the Village of Orland Park
Klein, Thorpe and Jenkins, Ltd.
15010 S. Ravinia – Suite 10
Orland Park, Illinois 60462

For Recorder's Use Only

**DEVELOPMENT AGREEMENT
(Zeigler Infiniti of Orland Park)**

INTRODUCTION

1. This Agreement entered into this 20th day of February, 2017, by and among the VILLAGE OF ORLAND PARK, an Illinois municipal corporation (hereinafter referred to as the "Village"), AJZ-INFINITI ORLAND PARK, LLC, an Illinois limited liability company ("Owner") and ZEIGLER INFINITI ORLAND PARK, LLC, a Michigan limited liability company ("Developer").

2. The property subject to this Agreement and legal title to which is vested in Owner (excepting such portion as is dedicated to the public), is legally described as follows:

THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (EXCEPT THE WEST 1 ROD OF THE NORTH 80 RODS THEREOF) OF SECTION 23, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF 159TH STREET AS DEDICATED PER DOCUMENT NO. 10909314, AND NORTH OF A LINE BEING 876.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 27-23-100-013 and 27-23-100-014

The said property is hereinafter referred to as the "Subject Property."

3. The Subject Property is located at 8751 W. 159th Street and consists of approximately six (6) acres of land.

4. The Subject Property is zoned in the BIZ General Business District and is proposed to be developed by the Developer for a 22,300 square foot, two-story motor vehicle sales facility at the southeast corner of 159th Street and 88th Avenue.

5. The Village of Orland Park is a Home Rule Unit pursuant to the provisions of the Illinois Constitution, Article VII, Section 6, and the terms, conditions and acts of the Village under this Agreement are entered into and performed pursuant to the Home Rule powers of the Village and the statutes in such cases made and provided.

RECITALS:

1. The parties hereto desire that the Subject Property be developed in the Village, subject to the terms and conditions as hereinafter set forth, and that the Subject Property be subdivided and developed in the manner as set forth in this Agreement.

2. The Developer, with Owner's consent, has petitioned the Village for a special use permit with modifications, a variance and a request to subdivide the Subject Property as more fully hereinafter set forth.

3. The parties hereto have fully complied with all relevant statutes of the State of Illinois and codes and ordinances of the Village including the filing of a petition by the Developer requesting a special use for the Subject Property to enable the development of the Subject Property as herein provided. The Village has caused the issuance of proper notice and held all necessary hearings to effectuate such special use as herein provided, including all hearings as are necessary to effectuate the plan of development herein set forth.

4. All reports by all relevant governmental entities have been submitted enabling appropriate action by the Village Board of Trustees to achieve the following:

(a) Adoption and execution of this Agreement by ordinance;

(b) Adoption of such ordinances as are necessary to effectuate the terms and provisions of this Agreement, including the classification of the Subject Property for purposes of the subdivision, variance and special use permit with modifications pursuant to the terms and conditions of this Agreement;

(c) The adoption of such other ordinances, resolutions and actions as may be necessary to fulfill and implement this Agreement pursuant to the terms and conditions herein contained.

5. The parties hereto have determined that it is in the best interests of the Village, the Owner and Developer and in furtherance of the public health, safety, comfort, morals and welfare of the community to execute and implement this Agreement, and that such implementation of this Agreement and development of the Subject Property pursuant to its terms and conditions will constitute an improvement of the tax base of the Village, be in

implementation of the comprehensive plan of the Village, and will constitute a preservation of environmental values.

6. Owner and Developer covenant and agree that they will execute all necessary directions and issue all necessary instructions and take all other action necessary to perform their respective obligations hereunder.

SECTION ONE: Special Use with Modifications, Variance, Subdivision, Plan Approval and Design Standards.

A. The Village, having held the necessary hearings before the relevant governmental bodies pursuant to statute and ordinances in such cases made and provided and pursuant to requisite notice having been given, shall by adoption of proper ordinance(s), concurrently with the execution and delivery of this Agreement:

1. Cause the Subject Property to be granted a special use under the Village Land Development Code (the "Code") to construct, operate and maintain a new approximately 22,300 square foot, motor vehicle sales facility at the southeast corner of 159th Street and 88th Avenue with modifications to enable parking between the building and the street on two frontages, reduce the required landscape foundation plantings on the north and east facades, and reduce the number of landscape islands from 34 to 22.

2. Cause the Subject Property to be granted the following three (3) variances: increase the parking capacity in excess of 20% from 74 spaces to 326 spaces, reduce less than 50% the amount of masonry used below the windows on the east elevation, and increase the lighting intensity from a maximum of 10 foot-candles at the property line to 50 foot-candles and from fifteen foot-candles interior to the site to 30 foot-candles.

B. The Subject Property shall be developed substantially in accordance with the preliminary site plan titled "Preliminary Site Plan Zeigler Orland Park", appended hereto and incorporated herein as EXHIBIT A, prepared by Spaceco Inc., dated 6/15/16, last revised 9/14/16, sheet number P-GM 4 of 6, subject to the following conditions to be performed by Developer:

1. Install a sidewalk and crosswalk connecting the building to the 159th Street pedestrian network.
2. Disallow the use of a public announcement system exterior to the building.
3. Keep all garage doors to service areas closed during the servicing of vehicles.
4. Meet all final engineering and building code related items.
5. Complete any temporary vehicle inventory storage onsite by May 1, 2018 or end of construction, whichever occurs first.

C. The Subject Property shall be developed substantially in accordance with the Elevations titled "New Dealership Facility for: Zeigler Infiniti", prepared by Linden Group, sheet A-4.0, dated 9/14/16, subject to the conditions outlined above and the following:

The Developer shall reasonably screen the rooftop mechanical units from view of the neighbors to the south.

D. The Developer shall submit a Plat of Subdivision signed by Owner to the Village for recording.

E. The Developer shall submit a final landscape plan, for separate review and approval by the Village within 60 days of final engineering approval.

F. All project and building signage shall be subject to review and approval by the Village, not to be unreasonably withheld, delayed or conditioned, and shall be consistent with the Village sign ordinance as set forth in the Code; and

G. The Developer shall comply with applicable laws and regulations concerning its development of the Subject Property.

SECTION TWO: Contributions.

Upon application for the initial building permit, Developer shall pay to the Village the transportation exaction fees as provided in Article 5, Section 5-112 H. 6. of the Code.

SECTION THREE: Storm Water Retention/Detention and Storm Sewers.

Storm water runoff emanating from the subject Property shall be retained or detained in the detention pond at the southeast corner of the Subject Property. Developer shall be required to submit a landscape plan that will include a Maintenance and Monitoring plan for the detention pond. In addition, a fifteen (15) foot wide naturalized landscape area is required around the pond with an eight (8) foot coexistent maintenance area. The design criteria, construction and maintenance of the storm sewers shall be in accordance with all standards of the Village in force on the date of final plan, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of final plat approval, and shall be completed by the Developer at its expense. All storm water detention/retention facilities located on the Subject Property shall be perpetually owned and maintained by the Developer.

SECTION FOUR: Water Supply.

Developer shall be required to construct and install at its expense all necessary on-site water mains to service the Subject Property. All such water mains shall be sized, constructed and installed in accordance with the Code and final engineering plans approved by the Village. The Developer shall pay to the Village the required water connection charge(s) based upon the size of the connection(s) in accordance with Village ordinances. The Developer shall maintain the water mains and appurtenances until final acceptance by the Village.

SECTION FIVE: Sanitary Sewers.

Developer shall construct and install at its expense all necessary sanitary sewers to service the Subject Property in accordance with the Code and final engineering plans approved by the Village. Said sewers shall be sized as required by the Village. All required fees are due

before a building permit will be issued. The design criteria and construction of the sanitary sewers shall be in accordance with all standards of the Village in force on the date of final plan, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of final plan approval, and shall be completed by the Developer at its expense. The Developer shall maintain the sanitary sewer mains and appurtenances until final acceptance by the Village.

SECTION SIX: Sidewalks, Street Lights, Streets and Landscaping.

All sidewalks and multi-use paths shown on the preliminary site plan (EXHIBIT A), as said plan may be finally approved and as conditioned., shall be constructed by Developer to the applicable Village standards and shall be maintained until final acceptance by the Village. Developer shall construct all street lights and all necessary electrical wiring required by the Village in order to meet all applicable Village standards. Developer shall maintain the street lighting until final acceptance by the Village. The Developer is responsible for energizing the street lights with the local energy supplier. Developer shall construct and install all landscaping requirements per the final landscape plan, meeting all Village Codes. Developer shall work with the appropriate municipal jurisdiction(s) along 88th Avenue to complete said construction of sidewalks and multi-use paths and to dedicate fifty (50) feet of public right-of-way to the Village of Orland Hills for 88th Avenue.

SECTION SEVEN: Easements.

Owner and Developer agree at the time of approval of this Development Agreement to grant to the Village, and/or obtain grants to the Village, of all necessary easements for the provision of sewer, water, street, or other utilities, including cable television, or for other improvements which may serve not only the Subject Property, but other properties in the general area, such as cross-access easements.

All such easements to be granted shall name the Village and/or other appropriate entities designated by the Village as grantee hereunder. It shall be the responsibility of Owner and Developer to obtain all easements, both on-site and off-site, necessary to serve the Subject Property.

SECTION EIGHT: Developmental Codes and Ordinances and General Matters.

The development of the Subject Property shall be in accordance with the existing building, zoning, subdivision, storm water retention and other developmental codes and ordinances of the Village as they exist on the date hereof, or, with respect to codes and ordinances subsequently adopted by the Village for the protection of life, health and safety and applicable to similar commercial buildings Village-wide, as are in existence during development of the Subject Property. Planning and engineering designs and standards, and road construction and dedication of public improvements, shall be in accordance with the then existing ordinances of the Village, or in accordance with the statutes and regulations of other governmental agencies having jurisdiction thereof if such standards are more stringent than those of the Village of Orland Park at such time.

No occupancy permit shall be issued for any building prior to the completion and acceptance by the Village of any required public improvements. Any required public improvements shall be completed within one (1) year from the date hereof and the Developer shall deliver to the Village an irrevocable letter of credit (the form of security Developer has elected to provide) in a form satisfactory to and from a bank or financial institution and in an amount as provided for in the Code. Said Letter of Credit is to include all costs related to required lighting, landscaping, roadway, sidewalk, walking path, sewer and water lines and storm water management facilities. The Village may, in its discretion, permit the amount of said letter of credit to be reduced, from time to time, as major public improvements are completed. The Village may also require an increase, from time to time, if the estimated cost of completing the public improvements increases more than 3% per annum.

SECTION NINE: Utilities.

All electricity, telephone, cable television and gas lines shall be installed underground, the location of which underground utilities shall be at Developer's option as long as the underground facilities do not conflict with Village-maintained infrastructure.

SECTION TEN: Impact Requirements.

Owner and Developer agree that any and all contributions, dedications, donations and easements provided for in this Agreement substantially advance legitimate governmental interests of the Village, including, but not limited to, providing its residents, with access to and use of public utilities, streets, fire protection, and emergency services. Owner and Developer further agree that the contributions, dedications, donations and easements required by this Agreement are uniquely attributable to, reasonably related to, and made necessary by the development of the Subject Property.

SECTION ELEVEN: Sales Tax Rebate.

The Village and Developer shall enter into the Sales Tax Rebate Agreement in substantially the form attached hereto as EXHIBIT B.

SECTION TWELVE: Binding Effect and Term and Covenants Running with the Land.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Subject Property, assignees, lessees and upon any successor municipal authorities of said Village and successor municipalities, for a period of ten (10) years from the date of execution hereof and any extended time that may be agreed to by amendment.

The terms and conditions of this Agreement relative to the payment of monies to the various contributions to the Village, construction and/or dedication of public improvements, granting of easements to the Village, dedication of rights-of-way to the Village and the developmental standards established herein shall constitute covenants which shall run with the land.

SECTION THIRTEEN : Notices.

Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified mail, postage prepaid and return receipt requested, as follows:

For the Village:

1. Daniel J. McLaughlin
Village President
14700 South Ravinia Avenue
Orland Park, Illinois 60462
2. John C. Mehalek
Village Clerk
14700 South Ravinia Avenue
Orland Park, Illinois 60462
3. E. Kenneth Friker
Village Attorney
Klein, Thorpe & Jenkins, Ltd.
15010 S. Ravinia Avenue – Suite 10
Orland Park, Illinois 60462

For the Developer:

1. Zeigler Auto Group II, Inc.
Zeigler Infiniti of Orland Park
Attn: Daniel Scheid
4201 Stadium Drive
Kalamazoo Michigan, 49008
2. Zeigler Infiniti of Orland Park
Attn: Daniel Scheid
11030 W 159TH ST
Orland Park, IL 60467

For the Owner:

1. AJZ-Infiniti Orland Park, LLC
4201 Stadium Drive
Kalamazoo, MI 49008

or such other addresses as any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

SECTION FOURTEEN: Signs.

The location of any sign upon the Subject Property shall be in accordance with an approved Signage Plan and the Village's Sign Ordinance, as set forth in the Code, and shall have reasonable setbacks from streets and highways as the interest of safety may require.

SECTION FIFTEEN: Reimbursement of Village for Legal and Other Fees and Expenses.

A. To Effective Date of Agreement.

The Developer, concurrently with the issuance of the building permit, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (1) the costs incurred by the Village for engineering services;
- (2) all reasonable attorneys' fees incurred by the Village; and
- (3) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

B. From and After Effective Date of Agreement.

Except as hereinafter provided, upon demand by Village made by and through its President, Developer from time to time shall promptly reimburse Village for all enumerated reasonable expenses and costs incurred by Village in the administration of the Agreement, including and limited to engineering fees, attorneys' fees and out of pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder.

Such costs and expenses incurred by Village in the administration of the Agreement shall be evidenced to the Developer upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Developer at its option from additional documents relevant to determining such costs and expenses as designated from time to time by the Developer.

Notwithstanding the immediately preceding paragraph, Developer shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against any party hereto, which relate to the terms of this Agreement, then, in that event, the Owner and/or

Developer as the case may be on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (1) Neither Owner nor Developer shall make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- (2) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village, the Owner and/or Developer on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Owner and/or Developer shall reimburse the Village from time to time on written demand from the President of Village and notice of the amount due for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other reasonable expenses of litigation, incurred by the Village in connection therewith.

In the event a party hereto institutes legal proceedings against any other party for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the unsuccessful party all expenses of such legal proceedings incurred by the successful party, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred in connection therewith. Any party may, in its sole discretion, appeal any such judgment rendered in favor of another party.

SECTION SIXTEEN: Warranties and Representations.

The Owner and Developer represent and warrant to the Village as follows:

1. Owner is the legal title holder and the owner of record of the Subject Property as indicated on the first page of this Agreement.
2. Developer proposes to develop the Subject Property in the manner contemplated in this Agreement.
3. Other than Owner and Developer, no other entity or person has any interest as of the date hereof in the Subject Property or its development as herein proposed.
4. Owner and Developer have provided the legal description of the Subject Property set forth in this Agreement and the attached Exhibits and said legal description is accurate and correct.
5. With respect to any real estate herein which will become property of the Village, Owner and Developer warrant and represent, to the best of their knowledge, that during the period of their ownership or control over said Subject Property they have no knowledge of, nor

reason to suspect, that there has been any underground storage (or other) tank or any presence, disposal, release or threatened release of hazardous substances or hazardous wastes on, from or under the property, by or through Owner, Developer or any other party whatsoever. Owner and Developer similarly represent and warrant that to the best of their knowledge, there was no underground storage (or other) tank and not any presence, disposal, release or threatened release of hazardous substances or hazardous waste on, from or under the property prior to Owner's or Developer's ownership or control of the Subject Property.

Owner and Developer similarly further represent and warrant that to the best of their knowledge, the Subject Property (including underlying soil and ground water conditions) is not in violation of any state, local, federal, municipal or other law, statute, regulation, code, ordinance, decree or other relating to hygienic or environmental conditions, and during ownership or control of the property by Owner or Developer, no party has stored or disposed of any flammable explosives, radioactive materials, hazardous waste, toxic substances or other related materials on, under or about the property. Owner and Developer shall and do hereby agree to indemnify, protect, defend, and hold the Village harmless from and against any claims, losses, demands, costs, proceedings, suits, liabilities, damages and causes of action, including consequential damages and attorneys' fees of counsel selected by the Village and other costs of defense incurred, arising against or suffered by the Village of its assigns as a consequence, directly or indirectly, of any misrepresentation by Owner or Developer of the foregoing representations and warranties, whether discovered before or after the conveyance of any of the Subject Property to the Village.

SECTION SEVENTEEN: Continuity of Obligations.

Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Owner, Owner and Developer shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it or them by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released them from any or all of such obligations.

SECTION EIGHTEEN: No Waiver or Relinquishment of Right to Enforce Agreement.

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or either of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION NINETEEN: Village Approval or Direction.

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be

given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

SECTION TWENTY: Singular and Plural.

Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

SECTION TWENTY-ONE: Section Headings and Subheadings.

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions hereunder whether covered or relevant to such heading or not.

SECTION TWENTY-TWO: Recording.

A copy of this Agreement and any amendment thereto shall be recorded by the Village at the expense of the Developer.

SECTION TWENTY-THREE: Authorization to Execute.

The officers of Owner and Developer executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on their behalf. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. Owner, Developer and Village shall, upon request, deliver to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all bylaws, resolutions, ordinances, partnership agreements, letters of direction or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

SECTION TWENTY-FOUR: Amendment.

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

SECTION TWENTY-FIVE: Counterparts.

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION TWENTY-SIX: Curing Default.

The parties to this Agreement reserve a right to cure any default hereunder within thirty (30) days from written notice of such default, or such additional time as is reasonably required to cure the default so long as the cure of default is commenced within said thirty (30) days, and efforts to effect such cure of default are diligently prosecuted to completion.

SECTION TWENTY-SEVEN: Conflict Between the Text and Exhibits.

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

SECTION TWENTY-EIGHT: Severability.

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve Village from performance under such invalid provision of this Agreement.

SECTION TWENTY-NINE: Definition of Village.

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

SECTION THIRTY: Execution of Agreement.

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on page 1 hereof which date shall be the effective date of this Agreement.

VILLAGE OF ORLAND PARK, an
Illinois Municipal Corporation

By: 
Village President

ATTEST:

By: 
Village Clerk

OWNER:

AJZ-INFINITI ORLAND PARK, LLC,
A Michigan limited liability company

By: 
Member/Manager

DEVELOPER:

ZEIGLER INFINITI ORLAND PARK, LLC,
a Michigan limited liability company

By:  _____
Member/Manager

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that DANIEL J. MCLAUGHLIN, personally known to me to be the President of the Village of Orland Park, and JOHN C. MEHALEK, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 6th day of March, 2017.

My commission expires Aug 30, 2018

Nancy R. Melinauskas
Notary Public



